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U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 05 013 50262 Office: NEBRASKA SERVICE CENTER Date: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an electro-optical engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree or an alien of exceptional ability but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief statement. A review of the director's decision, in the context of the earlier request for additional evidence,[1] suggests that the director applied too high a standard in this matter.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

[1] The director requested evidence of awards, professional memberships, the criteria for those memberships and published materials specifically about the petitioner. Lesser nationally or internationally recognized awards, memberships in associations that require outstanding achievements and published materials about the alien in major media are eligibility criteria for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, a higher classification than the one sought in this matter. 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii).

The petitioner holds a Ph.D. in Electrical and Computer Engineering from Northwestern University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, electro-optics, and that the proposed benefits of his work, improved remote detection of chemical and biological agents for environmental and defense purposes, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

[redacted], the petitioner's dissertation advisor at Northwestern, discusses the petitioner's work with laser radar (LIDAR). LIDAR units can be used to detect low concentrations of atmospheric pollutants and noxious agents. The usefulness of such units, however, is limited by their minimal portability as compact units generated inadequate power for broad area monitoring. The petitioner focused on improving the optical modulation scheme of such units through innovation of an AA1 modulation sequence. The petitioner's LIDAR units provide "up to 50 times greater signal-to-noise ratio than any previous LIDAR modulation sequences."

The petitioner submitted 18 published articles authored during his Masters and Ph.D. studies at Northwestern. The petitioner also submitted evidence that he had been cited 89 times in the aggregate. In the request for additional evidence, the director stated:

> [Citizenship and Immigration Services (CIS)] is especially interested in seeing articles from professional journals that specifically talk about the alien and the significance of his career discoveries. Again, articles that simply reference his research within a footnote or bibliography are not acceptable. Again, [CIS] would like to see articles that are specifically written about him/her and the value/quality of his/her work.

In response, counsel asserted that the petitioner is an alien of exceptional ability. As stated above, the petitioner is an advanced degree professional. A waiver of the alien employment certification in the national interest is available to both advanced degree professionals and aliens of exceptional ability. Thus, the issue of whether the petitioner may also be an alien of exceptional ability is moot. The petitioner also submitted evidence that while he begun working in a related area, he continued to publish his work.

When considering the petitioner's track record in the final decision, the director dismissed the petitioner's citation record, asserting that "research articles that only mention the petitioner as a lead researcher or a research participant, or that make references to his work as part of a bibliography are insufficient to establish his individual prominence within the field."

The director's discussion of the petitioner's citation record is flawed. The director appears to be evaluating the petitioner's citation record under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published materials about the alien in major media. That criterion, however, relates to a higher classification, aliens of extraordinary ability, which the petitioner in this matter does

not seek. Rather, the petitioner seeks a waiver of the alien employment certification requirement in the national interest pursuant to section 203(b)(2)(B) of the Act. While citations are not published material about the cited author and are professionally required when relying on the work of others, they demonstrate the usefulness of the cited work. Thus, evidence of *wide and frequent* citation is indicative of some degree of influence in the field, the proper standard in this matter. We find that 89 citations, in addition to the other evidence of record, satisfactorily establish the petitioner's influence in the field.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the electro-optical engineering community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

As a final note, we acknowledge that the petitioner ultimately seeks to work in an area limited to U.S. citizens and has recently been forced to work in a related area in which he continues to publish and maintain his record of success. We note that this decision does not allow the petitioner to expedite the path to U.S. citizenship after becoming a lawful permanent resident.

ORDER: The appeal is sustained and the petition is approved.